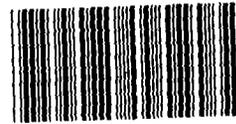


May 1991

# OCCUPATIONAL SAFETY & HEALTH

## OSHA Policy Changes Needed to Confirm That Employers Abate Serious Hazards



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Human Resources Division

B-243171

May 8, 1991

The Honorable Joseph M. Gaydos  
Chairman, Subcommittee on Health and Safety  
Committee on Education and Labor  
House of Representatives

The Honorable Paul B. Henry  
Ranking Minority Member  
Subcommittee on Health and Safety  
Committee on Education and Labor  
House of Representatives

The Occupational Safety and Health Administration (OSHA) inspects workplaces to determine whether employers (1) meet their responsibilities for providing workplaces that are free from recognized hazards and (2) comply with occupational safety and health standards. OSHA issues citations for violations found during inspections and specifies time limits within which hazardous conditions must be corrected or standards must be complied with. In the past, both GAO and the Department of Labor's Inspector General (IG) have expressed concern about the adequacy of OSHA's efforts to ensure that employers are correcting hazards identified during inspections. You asked us to assess whether OSHA's policies and procedures are adequate for it to determine whether hazards have been abated.

To answer your question, we reviewed OSHA's policies for confirming abatement and discussed them with OSHA headquarters and field staff. To obtain a better understanding of how OSHA carries out these policies, we reviewed (1) inspection case files in two area offices within Labor's Region V; (2) OSHA's fiscal year 1988 and 1989 internal field audit reports; (3) fiscal year 1989 inspection statistics and data from OSHA's computerized Integrated Management Information System; and (4) past studies by GAO, the Labor's IG, and a Labor enforcement task force. We also accompanied OSHA's inspectors on some follow-up inspections. See appendix I for further details on the objectives, scope, and methodology of our review.

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## Results in Brief

OSHA's policies and procedures for confirming abatement have limitations that affect its ability to detect employers who have failed to abate safety and health hazards. OSHA's policies are incomplete in two ways: (1) they do not require—they only request—employers to provide evidence of abatement and (2) they inadequately address confirmation of abatement of hazards found at construction worksites.

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## Background

In 1970, the Congress passed the Occupational Safety and Health Act to provide working conditions and workplaces that are free from safety and health hazards. The act authorizes the Secretary of Labor to establish safety and health standards and enforce employers' compliance with the standards. OSHA is responsible for administering the act, which it does through 79 area offices within 10 regions.

OSHA's enforcement activities include inspecting workplaces, issuing citations, and levying penalties to employers who are out of compliance. OSHA establishes an abatement date by which the employer must correct the violation.

OSHA usually relies on information from employers to confirm that hazards have been abated. When OSHA area directors issue citations for violations, they ask employers to notify OSHA promptly by letter that they have taken appropriate corrective actions within the time set forth on the citation. OSHA also asks employers to provide documentation, such as purchase orders and photographs, with their statements that abatement has taken place, but this documentation is not required by regulation. The only way OSHA can know with certainty that hazards have been abated is to reinspect the worksite. However, resource constraints and the need to conduct higher priority inspections limit the number of OSHA's follow-up inspections. OSHA's guidance to regions and area offices is that the number of follow-up inspections should not normally exceed 10 percent of all inspections. In fiscal year 1989, 6 percent of all inspections were follow-ups. OSHA sometimes returns to the same worksite, however, for inspections that are not follow-ups. Such inspections may result from complaints, referrals, fatalities, or catastrophes.

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Both GAO and Labor's IG have evaluated OSHA's abatement procedures.<sup>1</sup> These studies reported that OSHA's procedures for documenting abatement were inadequate. Problems cited in these studies include: (1) required follow-ups were not done, (2) follow-up inspections were untimely,<sup>2</sup> and (3) cases were closed without adequate documentation that hazards had been abated. For example, in 1986 and 1987 the Department of Labor's IG tested 424 files from nine field offices in two regions and found that 47 percent of the files tested either contained no evidence or inadequate documentation to indicate that the hazards were corrected. OSHA responded by (1) strengthening its administrative procedures—requiring area offices to take additional steps to ensure employer response—and (2) expanding its policy on mandatory follow-up inspections.

In our 1990 report on options to improve OSHA's effectiveness we summarized problems with hazard abatement, including OSHA's limited information from employers about abatement actions they have taken.<sup>3</sup> Although we made no specific recommendations to OSHA, one option we identified was for OSHA to establish a regulation requiring employers to provide proof of hazard abatement. An internal Department of Labor Task Force on Enforcement subsequently reported in its September 24, 1990, report to the Secretary of Labor that OSHA was considering such a regulation in response to reports from GAO and the Department's IG.

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## Abatement Confirmation Policies Are Inadequate

OSHA's policies and procedures for confirming abatement have two weaknesses: (1) they lack a regulatory requirement that employers provide evidence of abatement and (2) they inadequately address abatement of hazards found at construction worksites.

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<sup>1</sup>Workplace Inspection Program Weak in Detecting and Correcting Serious Hazards (GAO/HRD-78-34, May 19, 1978); Informal Settlement of OSHA Citations: Comments on the Legal Basis and Other Selected Issues (GAO/HRD-85-11, Oct. 26, 1984); and Special Review of OSHA Enforcement Activities (DOL/OIG Report No. 02-6-028-10-105, Sept. 11, 1987).

<sup>2</sup>OSHA policy requires follow-up inspections for the most serious violations within 10 days of the latest abatement date.

<sup>3</sup>Occupational Safety and Health: Options for Improving Safety and Health in the Workplace (GAO/HRD-90-66BR, Aug. 24, 1990).

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## No Regulatory Requirement for Evidence of Abatement

We found some indications that OSHA is closing cases with inadequate documentation that employers have abated hazards. We believe the inadequate documentation is due, at least in part, to the fact that employers are not required to provide the requested evidence to OSHA. As a result of OSHA's closing cases with inadequate documentation, employers may not have corrected the hazards and workers may remain at risk. We cannot estimate how many employers fail to abate hazards that OSHA believes they have abated. However, OSHA found that employers failed to correct known hazards in at least one-fourth of the follow-up inspections conducted in fiscal year 1989.

The procedure for verifying abatement starts when OSHA mails citations to employers. At that time, it requests that employers respond with letters detailing specific abatement actions and the date abatement was achieved for each violation and notes that a follow-up inspection may occur if there is no response. Employers are also asked to send photographs, invoices, diagrams, and other documentary evidence to help confirm abatement, but there is no requirement that they do so. There is no penalty if they choose to send only a letter with no documentation. OSHA's Field Operations Manual states that, if employers do not send a letter, verification can be determined by telephone contact or by follow-up inspection. If the inspector verifies abatement by telephone, the Field Operations Manual states "... documentation shall be included in the case file as to the specific corrective action taken for each violation cited." That is, the inspector is supposed to record what the employer said about the corrective actions taken.

OSHA's internal audits in fiscal years 1988 and 1989, however, found incomplete case file documentation of abatement actions. The field audit reports included 78 audits that addressed abatement confirmation at most of OSHA's 79 area offices. Auditors were often unable to determine how area offices had confirmed abatement and what types of information they had accepted as evidence. In September 1989, the Director of the Office of Field Programs notified all OSHA regional administrators that the audits also revealed many abatement assurance problems and improvements were needed in regional oversight efforts.

To illustrate the abatement documentation problems OSHA found in the field audits, we selected seven case files that had documentation problems. Not one of the seven cases had a complete written description from the employer of the corrective actions. Other problems included the following:

- Employers did not provide letters containing all the material OSHA requested.
- Photographs presented as evidence were of a quality too poor to confirm the actions taken.
- OSHA accepted oral assurances during informal conferences and informal settlement agreements without obtaining supporting evidence that the employer had taken abatement actions.
- OSHA inspectors concluded that certain hazards had been abated during the inspections but failed to describe what employers had done.

The absence of a regulatory requirement for documentation of employers' abatement actions contributes to the problem of incomplete abatement documentation. Because employers are not required to provide this evidence, many of them are not doing so. Given OSHA's limited inspection resources for monitoring employers' actions, it relies on the evidence they provide. As a result, OSHA frequently has information that is inadequate to draw sound conclusions about employers' actions.

When case files are closed with inadequate evidence of abatement, OSHA does not know which hazards have been corrected and which have not. Some employers may not have abated hazards. Even though employers selected for follow-up inspections may not be typical of all employers (they are selected primarily because of the severity of their violations rather than by a random process), follow-up inspections give some suggestion of the lack of compliance that may exist.<sup>4</sup>

In fiscal year 1989, at least 24 percent of OSHA's follow-up inspections found that employers had not corrected known hazards.<sup>5</sup> OSHA officials said that the number of employers failing to correct known hazards can be determined in two ways: (1) employers who were issued notices of failure-to-abate, stating that they had not corrected specific hazards for which they were previously cited;<sup>6</sup> or (2) employers who were issued citations for repeat or willful violations. OSHA issued failure-to-abate

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<sup>4</sup>OSHA pointed out in its comments on a draft of this report that area directors can also direct follow-up inspections to employers who fail to provide abatement documentation or to employers they believe are unlikely to have abated hazardous conditions. However, OSHA has no record of how many employers are selected for follow-up inspections for these reasons.

<sup>5</sup>In its comments on a draft of this report OSHA emphasized that this percentage relates to follow-up visits only. OSHA believes that, overall, the proportion of employers who do not correct known hazards is much lower than 24 percent.

<sup>6</sup>Failure-to-abate notices are issued when an employer fails to correct a previously cited violation. Fines can be as high as \$7,000 a day for each uncorrected violation.

notices to 24 percent of the employers selected for follow-up inspections. It also cited 11 percent of them for failing to correct hazards about which they had clear knowledge (willful violations) or for hazards that were essentially the same as ones previously cited (repeat violations).<sup>7</sup> (See table 1.) By industry, the percentage of follow-up inspections finding failure to correct known hazards ranged from at least 31 percent in "other" industries to at least 15 percent in the construction industry.

**Table 1: Employers' Failure to Correct Known Hazards Found in Follow-Up Inspections, Fiscal Year 1989**

Follow-up inspections	Construction	Manufacturing	Maritime	Other <sup>a</sup>	Total
Total follow-up inspections	648	1,912	31	710	<b>3,301</b>
Percent with failure-to-abate notices	15	25	29	31	<b>24</b>
Percent with repeat or willful violations	7	13	22	10	<b>11</b>

<sup>a</sup>Other includes, for example, wholesale and retail trades and service businesses.

## Inadequate Abatement Confirmation at Construction Worksites

Because the construction industry has the highest serious injury rate and the third highest fatality rate (after mining and agriculture), OSHA directs more than half its inspections to construction activities. However, OSHA lacks adequate procedures to deal with the abatement confirmation problems posed by the often short duration of construction activities.

OSHA's abatement confirmation process focuses on problems at a specific site. Because many construction activities are of short duration, dealing with the abatement confirmation process can pose a problem for OSHA within this industry. Thus, work at a construction site where a hazardous condition has been cited may be completed before OSHA has an opportunity to confirm that the hazard has been abated. Relatively few follow-ups are done because the worksites are closed down so quickly. In fiscal year 1989, for example, although 55 percent of OSHA's inspections were of construction sites, only 20 percent of all follow-up inspections were of construction sites.

OSHA treats construction inspections like its other inspections. It cites the employer for violations and requires the employer to correct the problem. However, once the construction site is no longer in operation

<sup>7</sup>Some employers may have been issued failure-to-abate notices and also cited for willful or repeat violations; therefore, the percentage of different employers failing to correct known hazards could range from 24 to 35 percent.

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OSHA considers the hazard abated. After work has ended at the inspected site, OSHA requires no further abatement effort by the contractor even if the cause of the problem—such as untrained personnel, defective equipment, or inadequate procedures for performing work safely—could continue at another worksite if the same personnel, equipment, and procedures are used again. OSHA accepts completion of work at a site as a form of abatement and closes the case.

For example, in 1988 OSHA cited a contractor for a serious violation for failure to equip scaffolds with guard rails to prevent employees from falling. Because the contractor paid the penalty and gave OSHA written and oral assurances that the employees were installing safety equipment as instructed, OSHA considered the hazard abated, did not make a follow-up inspection, and closed the case file. Almost a year later, an OSHA inspector driving by a construction site observed possible violations by the same contractor but at a different site from the earlier inspection. OSHA inspected the worksite and found the same serious violation and cited the contractor for a repeat violation. This time OSHA considered the hazard abated when the contractor finished work at the site. The employer could have been required to correct the underlying problems, which are the procedures and processes that led to the hazard, and to implement the corrections at all its worksites.

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## Conclusions

OSHA's policies for confirming abatement need to be improved to provide better evidence that employers have corrected hazards found during an inspection.

We believe that OSHA would obtain more reliable evidence of abatement if its regulations required employers to provide specific documentation that they have abated hazards. OSHA would have an improved capability for detecting noncomplying employers and determining where to conduct follow-up inspections. In addition, employers might be more likely to abate the hazard because they would know that they have to provide specific evidence to OSHA.

OSHA needs to confirm abatement of construction hazards in such a way that they will not be repeated at subsequent worksites. OSHA's practice of accepting worksite closing as a form of abatement allows the continuation of procedures and practices that perpetuate hazardous conditions. Consequently, contractors can continue to use a defective piece of equipment, untrained employees, or inadequate procedures and processes at

subsequent worksites. OSHA should require contractors to take abatement actions that will correct what caused the hazard rather than just eliminating the hazard at the inspected site.

## Recommendations

We recommend that the Secretary of Labor direct OSHA to

- promulgate a regulation requiring employers to submit detailed evidence of what corrective actions have been taken to abate hazards and
- revise its policies so that (1) citations to employers at construction worksites require correcting the condition, equipment, or procedure that created the hazard and (2) abatement cannot be achieved solely by moving to another location if the cited condition, equipment, or procedure would be likely to create a hazard at the new location.

## Agency Comments

Labor agreed that the procedures it uses to verify abatement, which are administrative rather than regulatory, may limit its ability to confirm abatement. It said that GAO has provided two valuable recommendations that will receive serious consideration. Labor deferred identifying what actions would be taken, if any, to implement the recommendations. Labor also suggested some clarifications in our discussion regarding the results of follow-up inspections and we made changes in our report to reflect Labor's concerns. Labor's letter is shown in appendix II.

As agreed with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this report until 15 days after its issue date. At that time, we will send copies to the Secretary of Labor and other interested parties. Copies also will be made available to others on request. Please call me on (202) 275-1793 if you or your staff have any questions about this report. Other major contributors to this report are listed in appendix III.



Franklin Frazier  
Director, Education and  
Employment Issues



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Table 1: Employers' Failure to Correct Known Hazards  
Found in Follow-Up Inspections, Fiscal Year 1989

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## Abbreviations

GAO	General Accounting Office
IG	Office of Inspector General
OSHA	Occupational Safety and Health Administration



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# Objectives, Scope, and Methodology

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In the past, both GAO and the Department of Labor's Inspector General have expressed concern about the adequacy of OSHA's efforts to ensure that employers are correcting hazards identified during inspections. The objective of our review was to determine whether OSHA's policies and procedures are adequate for it to determine whether hazards have been abated.

To document the problems found in the past, we reviewed reports by GAO, the Department of Labor's IG, and a Department of Labor internal task force on enforcement.

To determine the adequacy of OSHA's abatement confirmation policies we

- reviewed OSHA's abatement policies and procedures;
- interviewed area office, Region V,<sup>1</sup> and national office officials;
- obtained inspection data from OSHA's management information system; and
- reviewed OSHA's internal field audit reports for fiscal years 1988 and 1989.

The internal field audit reports included 78 comprehensive, special, and follow-up audits that addressed abatement confirmation.

To obtain a better understanding of OSHA's procedures and obtain illustrations of the problems of confirming abatement, we reviewed some case files and accompanied OSHA inspectors on some follow-up inspections. We examined seven case files in Region V's North Aurora area office and accompanied OSHA inspectors on seven follow-up inspections at Region V's Calumet City and Chicago North area offices. We judgmentally selected the case files to illustrate a variety of abatement situations. At our request, the Calumet City and Chicago North area offices selected a variety of inspections, including health and safety and construction and manufacturing, for our observation of their follow-up inspections.

We conducted our review between March and September 1990 in accordance with generally accepted government auditing standards.

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<sup>1</sup>Region V includes Illinois, Indiana, Ohio, Michigan, Minnesota, and Wisconsin.

# Comments From the Department of Labor

**U.S. Department of Labor**

**MAR 26 1991**

Assistant Secretary for  
Occupational Safety and Health  
Washington, D.C. 20210



Mr. Franklin Frazier  
Director of Education  
and Employment Issues  
U.S. General Accounting Office  
Washington, D.C. 20548

Dear Mr. Frazier:

Thank you for your letter of February 12, transmitting the General Accounting Office (GAO) draft report entitled, "OSHA Policy Changes Needed to Confirm That Employers Abate Serious Hazards." The objective of the study was to determine the adequacy of the Occupational Safety and Health Administration's (OSHA) current policies and procedures to determine whether hazards have been abated.

OSHA is committed to improving safety and health conditions in the workplace and we are continually seeking ideas which will improve these efforts. The issue of hazard abatement in particular, is one that OSHA takes very seriously because it is only through the elimination of workplace hazards that we can achieve our larger goals. This report has provided two valuable recommendations which will receive serious consideration. We will be reporting back to you on our planned actions within six months of receipt of the final report.

As indicated in the GAO report, OSHA does have well-defined procedures and policies to verify hazard abatement which are executed by field personnel. However, these procedures are administrative rather than regulatory and, therefore, may limit our ability to confirm abatement. Obtaining timely abatement confirmation has been a serious concern of the Agency and, as the report mentions, OSHA has implemented revised internal audit and regional oversight processes to improve employers' documentation of abatement.

One area of the report which OSHA believes needs clarification is in the discussion of follow-up inspections. GAO reports that "at least 24 percent of the employers inspected in FY 1989 had not corrected known hazards." It should be emphasized that this percentage relates to follow-up inspections only, which comprise just 6 to 8 percent of total inspections. It would be misleading to suggest that one-fourth of all employers do not correct known hazards; OSHA believes that the number is much lower than that.

Additionally, OSHA procedures mandate follow-up inspections in situations where it may be more likely that an employer will not abate, i.e., imminent danger, willful, repeat and high gravity violations. Further, Area Directors are allowed some discretion in directing inspection resources to those employers who have not provided requisite abatement documentation and who they believe

Appendix II  
Comments From the Department of Labor

are unlikely to have abated hazardous conditions. We suggest that the 24 percent failure-to-abate statistic could be an indication of successful targeting of those employers rather than an indication of noncompliance by employers.

As indicated in your report, OSHA focuses more than 50 percent of inspections in the construction industry because of the high serious injury and fatality rates experienced at construction worksites. OSHA is concerned about abatement at these temporary sites and realizes that they require unique treatment.

It is our view that most violations directly affecting safety and health on construction sites are abated immediately by construction contractors. This abatement is verified by the compliance officer before leaving the worksite. In extremely serious situations, "imminent danger" notices are posted and immediate abatement is achieved and verified by the compliance officer onsite. Because of the nature of mobile worksites, there is no guarantee, even if abatement is verified at a given site, that an employer will fulfill his or her responsibility under the OSH Act when utilizing equipment and conducting business at another site. The issue of hazard abatement at temporary sites poses a unique challenge to OSHA, and we will continue to seek improved means to verify abatement and ensure safe conditions for construction workers.

GAO's report on OSHA's efforts to verify employers' abatement of hazards has presented us with valuable recommendations to strengthen our existing efforts. We appreciate the information GAO has presented in this report, which will assist us in our continuing efforts to improve safety and health conditions in the workplace.

Sincerely,



Gerard F. Scannell  
Assistant Secretary

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# Major Contributors to This Report

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# Related GAO Products

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Occupational Safety & Health: Inspectors' Opinions on Improving OSHA Effectiveness (GAO/HRD-91-9FS, Nov. 14, 1990).

Occupational Safety & Health: Options for Improving Safety and Health in the Workplace (GAO/HRD-90-66BR, Aug. 24, 1990).

How Well Does OSHA Protect Workers From Reprisals: Inspector Opinions (GAO/T-HRD-90-8, Nov. 16, 1989).

Occupational Safety & Health: OSHA Contracting for Federal Rulemaking Activities (GAO/HRD-89-120BR, June 16, 1989).

Occupational Safety & Health: California's Resumption of Enforcement Responsibility in the Private Sector (GAO/HRD-89-82, Apr. 17, 1989).

Occupational Safety & Health: Assuring Accuracy in Employer Injury and Illness Records (GAO/HRD-89-23, Dec. 30, 1988).

OSHA's Resumption of Private Sector Enforcement Activities in California (GAO/HRD-88-19, June 20, 1988).

OSHA's Monitoring and Evaluation of State Programs (GAO/T-HRD-88-13, Apr. 20, 1988).

Informal Settlement of OSHA Citations: Comments on the Legal Basis and Other Selected Issues (GAO/HRD-85-11, Oct. 26, 1984).

Workplace Inspection Program Weak in Detecting and Correcting Serious Hazards (GAO/HRD-78-34, May 19, 1978).

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